*** HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE**
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

+WRIT APPEAL No. 1 of 2007

% Dated 25-07-2007

Sri Kurapati Maria Das

… Appellant

VERSUS

$ M/s. Dr. Ambedker Seva Samajam,
Ambedkar Bhawan, Akberpet, Bapatla,
Guntur District & 17 others.

Respondents

! Counsel for the appellant : Sri S. Satyanarayana Prasad
Senior Advocate for
Smt. C. Sindu Kumari

^Counsel for Respondent No.1-10: Sri M. Ravindranath Reddy

Counsel for respondent Nos.11,13&16: Government Pleader for
Municipal Administration

Counsel for respondent Nos.14,15,17&18: Government Pleader
for Social Welfare

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? Cases referred

1. 1999 (6) ALT 217 (DB)
2. AIR 1999 SC 1723
3. AIR 1952 SC 64
4. AIR 1965 SC 1892
5. AIR 1985 SC 1746
6. (2003) 8 SCC 204
07. 2005 (3) ALT 578 (DB)
08. AIR 1965 SC 491
09. AIR 1954 SC 520
10. AIR 1978 SC 851
11. AIR 1988 SC 61

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WRIT APPEAL No. 1 of 2007

Between:

Sri Kurapati Maria Das

… Appellant

AND

M/s. Dr. Ambedker Seva Samajam,
Ambedkar Bhawan, Akberpet,
Bapatla, Guntur District
and seventeen others.

… Respondents

; JUDGMENT :

Counsel for the appellant : Sri S. Satyanarayana Prasad, Senior Advocate for Smt. C. Sindu Kumari

Counsel for respondent Nos.1to10 : Sri M.Ravindranath Reddy

Counsel for respondent Nos,11,13&16: Government Pleader for Municipal

Administration

Counsel for respondent Nos.14,15,17 &18: Government Pleader for Social Welfare

Dated: July, 2007

Per C.V.NAGARJUNA REDDY, J.

Respondent No.9 in Writ Petition No.17853 of 2006 against whom a writ of Quo Warranto was issued by the learned Single Judge, vide his order dated 21.12.2006, has filed this appeal under Clause 15 of the Letters Patent.

For deciding the appeal, we may briefly notice the facts:

The Government of Andhra Pradesh (respondent No.11 herein) issued notification dated 18.08.2005 whereby the office of the Chairperson of Bapatla Municipal Council (for short, 'the Council') was reserved for Scheduled Caste. Thereafter, District Collector, Guntur (respondent No.14 herein) issued notification dated 22.08.2005 reserving Ward No.8 for the Scheduled Caste. On 29.08.2005, the State Election Commission (respondent No.12 herein) issued notification for holding election to the Council. As per the schedule notified by respondent No.12, 24.9.2005 was fixed for election to the Wards and 30.9.2005 was fixed for election to the office of Chairperson.

Respondent No.9, who belongs to Scheduled Caste (Mala), filed nomination papers for contesting election from Ward No.8. The appellant filed his nomination as a candidate of the Indian National Congress. In the election held on 24.9.2005, the appellant was declared elected as Councilor from Ward No.8. Later on, he was elected as Chairman of the Council.

Soon after the elections, respondent No.1 made representation dated 22.03.2006 to Superintendent of Police, Guntur to investigate into the issue relating to the appellant's community status. After one month, he made representation dated 14.4.2006 for initiation of action against the appellant by alleging that he got himself elected by making a false claim of being a member of Scheduled Caste. A similar representation was made to Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes. On 18.4.2006, respondent No.1 filed a complaint before District Collector, Guntur under Section 5 read with Section 12 of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issuance of Community Certificates Act, 1993 (for short, 'the 1993 Act'). He then filed application under the Right to Information Act, 2005 for supply of documents such as the application filed by the appellant in the month of August, 2005 for issuing a caste certificate, the documents enclosed to the said application for substantiating his claim as belonging to the Scheduled Caste, the previous certificate, if any, issued to the appellant and the caste certificate issued to the appellant pursuant to the application made by him in the month of August, 2005, but could not get the copies of the desired documents.

Having failed to persuade the concerned authorities to enquire into the allegations made by him against the appellant, respondent No.1 along with some voters filed writ petition under Article 226 of the Constitution of India for issue of a writ of Quo Warranto against the appellant by alleging that the appellant does not belong to Scheduled Caste and he was not eligible to contest election from Ward No.8 and the office of the Chairperson. Along with the writ petition, the petitioners filed a copy of the Service Roll of the appellant maintained by OSS and Work Charge Establishment of the office of the Assistant

Engineer (Operation), Bapatla, Andhra Pradesh State Electricity Board and the seniority list of the Assistant Linemen prepared by the Southern Power Distribution Company of Andhra Pradesh Limited, Operation Division, Tenali, a successor of Andhra Pradesh State Electricity Board, in support of their contention that the appellant is a Christian Mala and belongs to BC-C category.

In the counter filed by him, the appellant invoked Article 243ZG of the Constitution and pleaded that the writ petition is not maintainable. He further pleaded that the election can be called in question only in accordance with the procedure prescribed under the Rules made under the Andhra Pradesh Municipalities Act, 1965 (for short, 'the 1965 Act' relating to election disputes and that unless the caste certificate issued by the competent authority is cancelled in accordance with the procedure prescribed under the 1993 Act, his election cannot be set aside. After considering the rival pleadings and arguments of the learned counsel for the parties, the learned Single Judge, vide his order dated 21.12.2006, allowed the writ petition and declared that 9th respondent (the appellant herein) is an usurper of the office of the Council of 8th Ward as also the office of Chairman of the Council. The learned Single Judge further held that 9th respondent is guilty of playing fraud on the Constitution and, therefore, it is not necessary to drive the writ petitioners to any other forum on the ground of availability of alternative remedy or on the ground that some question of fact is involved.

Sri S. Satyanarayana Prasad, learned Senior Counsel for the appellant made the following submissions:

(1) Article 243ZG (b) of the Constitution of India prohibits calling in question any election to a municipality except by an election petition as prescribed under any law made by the Legislature of

the State and, therefore, the writ petition filed by respondent Nos.1 to 10 for nullifying the appellant's election is not maintainable;

(2) Respondent Nos. 1 to 10 had effective alternative remedies under Rules 1 and 2 of the Andhra Pradesh Municipalities (Decision on Election Disputes) Rules, 1967 and Section 5 of the 1993 Act and, therefore, the writ petition filed by them ought to have been dismissed by the learned Single Judge;

(3) The question whether the appellant belongs to Scheduled Caste or BC-C category is a seriously disputed question of fact and the learned Single Judge gravely erred by making enquiry into such question of fact and nullifying the election.

In support of his contentions, the learned counsel relied upon the judgments in **K. Vishnuvardhan Reddy and another vs. District Collector and District Election Authority, Kurnool District and another**[1] and **Sadhanapalli Bheemaraju and others vs. Secretary, A.P. Legislative Assembly, Hyderabad and others**[2].

Per contra, Sri M. Ravindranath Reddy, learned counsel for respondent Nos. 1 to 10 submitted that the objection to the maintainability of the writ petition on the ground of bar contained in Article 243ZG (b) of the Constitution is not tenable because the scope of a writ of Quo Warranto is wholly different from the scope of an Election Petition. He submitted that the writ petition filed by respondent Nos.1 to 10 was for ousting the appellant from the offices of the Councilor and the Chairperson of the Council on the ground that he has usurped those offices by playing fraud and, therefore, they could not have been non-suited on the ground of availability of alternative remedy or in view of the bar contained in Article 243ZG. In

support of this contention, the learned counsel referred to and relied upon the judgment of the Supreme Court in **K. Venkatachalam vs A.Swamickan and another**[3]. Learned counsel further submitted that though respondent No.1 tried his best to sensitize the authorities concerned to the usurpation of office by the appellant by using a false community certificate, they failed to take any action under the relevant statutory provisions and that the remedy under Section 5 of the 1993 Act can never be construed as an effective alternative remedy to the constitutional remedy of writ of Quo Warranto, which could be issued only by the superior Courts. Learned counsel invited our attention to the service roll issued by the employer of the appellant and argued that the same is sufficient to prove that he belongs to B.C. (C) category.

We have given our serious thought to the respective submissions and scanned the record.

A writ of Quo Warranto is a constitutional remedy, which can be availed against a person, who is not qualified to hold a public office or post. By entertaining a petition filed under Article 226 of the Constitution of India, the superior Courts can call upon a person to show as to under what right he holds a public office, franchise or liberty. In **The University of Mysore vs C.D. Govinda Rao and another**[4], a Constitution Bench of the Supreme Court dealt with the scope of writ of Quo Warranto and referred to Halsbury's Law of England, 3rd Edition, Vol.II Page 145 in paragraph 7 of the judgment, which can be usefully extracted hereunder:

> "As Halsbury has observed:
>
> "An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to enquire by what authority he

supported his claim, in order that the right to the office or franchise might be determined”.”

The Supreme Court then observed:

> “If the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provision; it also protects a citizen from being deprived of public office to which he may have a right. **It would be seen that if these proceedings are adopted subject to the conditions recognized in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it**. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, *inter alia,* that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.”

We shall now consider whether the learned Single Judge committed an error by entertaining the writ petition filed by respondent Nos.1 to 10 in the face of the bar created by

Article 243ZG (b) of the Constitution. Article 243ZG (b) reads as under:

> “No election to any Municipality shall be called in question except by an election petition presented to such

authority and in such manner as is provided for by or under any law made by the Legislature of a State."

In **K. Venkatachalam (3 supra)**, the Supreme Court considered an issue similar to the one dealt with and decided by the learned Single Judge. The facts of that case show that Venkatachalam filed his nomination for being elected as a member of the Legislative Assembly for Lalgudi Assembly constituency in Tamil Nadu, though he was not an elector in the electoral roll of that constituency. A year after the date of election, the un-successful candidate (Swamickan) filed a writ petition under Article 226 of the Constitution for a declaration that Venkatachalam was not qualified to be a member of the Tamil Nadu Legislative Assembly representing Lalgudi Assembly Constituency since he was not an elector in the electoral roll of the said constituency in the general election in question. He also prayed alternatively for a writ of quo warranto directing Venkatachalam to show under what authority he was occupying the seat in Tamil Nadu Legislative Assembly as a member representing Lalgudi Assembly Constituency. Swamickan did not file any petition calling in question the election of Venkatachalam under Section 81 of the Representation of the People Act, 1951. A learned Single Judge of the High Court of Madras dismissed the writ petition holding that Article 329 (b) of the Constitution was a complete bar to maintain a writ petition and that a remedy was available under the Representation of the People Act, 1951. However, the writ appeal filed by Swamickan was allowed by the Division Bench of the High Court which held that the High Court had power and jurisdiction under Article 226 of the Constitution to declare that the election of Venkatachalam was illegal inasmuch as he did not possess the basic constitutional and statutory qualifications. Venkatachalam filed an appeal with the application for leave against

the said judgment of the Division Bench. His main contention before the Supreme Court was based on Article 329 (b) of the Constitution, which creates a bar on calling in question any election to either House of Parliament or to the either House of the Legislature of a State except by way of an election petition. In support of his contention, Venkatachalam relied on the judgments of the Supreme Court in **N.P. Ponnuswami vs Returning Officer, Namakkal Constituency, Namakkal**[5], **Durga Shankar Mehta vs Raghuraj Singh**[6], **Brundaban Nayak vs Election Commission of India**[7], **Mohinder Singh Gill vs Chief Election Commissioner, New Delhi**[8], **Krishna Ballabh Prasad Singh vs Sub-Divisional Officer, Hilsa-cum-Returning Officer**[9] and **Election commission of India vs Shivaji**[10].

After carefully analyzing the facts in each of the aforementioned cases, the Supreme Court distinguished the same. Paragraphs 20 and 25 to 28 of the report of **Venkatachalam**'s case, which contained detailed discussion on the issue, read as under:

> "20. In all these cases there is a common message that when the poll or repoll process is on for election to the Parliament or Legislative Assembly, High Court cannot exercise its jurisdiction under Article 226 of the Constitution and that remedy of the aggrieved parties is under the Act read with Article 329 (b) of the Constitution. The Act provides for challenge to an election by filing the election petition under Section 81 on one or more grounds specified in sub-section (1) of Sections 100 and 101 of the Act. There cannot be any dispute that there could be a challenge to the election of the appellant by filing an election petition on the ground of improper acceptance of his nomination inasmuch as the appellant was not an elector on the electoral roll of Lalgudi

Assembly Constituency and for that matter also by any non-compliance with the provisions of the Constitution or of the Act. If an election petition had been filed under Section 81 of the Act High Court would have certainly declared the election of the appellant void. It was, therefore, submitted that respondent could not invoke the jurisdiction of the High Court under Article 226 of the Constitution in view of Article 329 (b) of the Constitution read with Sections 81 and 100 of the Act and only an election petition was maintainable to challenge the election of the appellant. That right the respondent certainly had to challenge the election of the appellant. Election petition under Section 81 of the Act had to be filed within forty-five days from the date of election of the returned candidate, that is the appellant in the present case. This was not done. There is no provision under the Act that an election petition could be filed beyond the period of limitation prescribed under Section 81 of the Act. That being so the question arises if the respondent is without any remedy particularly when it is established that the appellant did not have the qualification to be elected to the Tamil Nadu Legislative Assembly from Lalgudi Assembly Constituency.

(25) In the present case the appellant was not an elector in the electoral roll of Lalgudi Assembly Constituency. He, therefore, could not be elected as a member from that constituency. How could a person who is not an elector from that constituency could represent the constituency? He lacked the basic qualification under clause (c) of Article 173 of the Constitution read with Section 5 of the Act which mandated that a person to be elected from an Assembly constituency has to be elector of that constituency. The appellant in the present case is certainly disqualified for being a member of the Legislative Assembly of Tamil Nadu. His election, however, was not challenged by filing an election petition under Section 81 of the Act. Appellant knows he is disqualified. Yet he sits and votes as a member of the

Legislative Assembly. He is liable to penalty of five hundred rupees in respect of each day on which he so sits or votes and that penalty is recoverable as debt due to the State. There has not been any adjudication under the Act and there is no other provision of the Constitution as to how penalty so incurred by the appellant has to be recovered as a debt due to the State. Appellant is liable to penalty nevertheless as he knows he is not qualified for membership of the Legislative Assembly and yet he acts contrary to law.

(26) The question that arises for consideration is if in such circumstances High Court cannot exercise its jurisdiction under Article 226 of the Constitution declaring that the appellant is not qualified to be member of the Tamil Nadu Legislative Assembly from Lalgudi Assembly Constituency. On the finding recorded by the High Court it is clear that the appellant in his nomination form impersonated a person known as Venkatachalam s/o Pethu, taking advantage of the fact that such person bears his first name. Appellant would be even criminally liable as he filed his nomination on affidavit impersonating himself. If in such circumstances he is allowed to continue to sit and vote in the Assembly his action would be fraud to the Constitution.

(27) In view of the judgment of this Court in the case of Election Commission of India v. Saka Venkata Rao, AIR 1953 SC 210, it may be that action under Article 192 could not be taken as the disqualification which the appellant incurred was prior to his election. Various decisions of this Court which have been referred to by the appellant that jurisdiction of the High Court under Article 226 is barred challenging the election of a returned candidate and which we have noted above do not appear to apply to the case of the appellant now before us. **Article 226 of the Constitution is couched in widest possible term and unless there is clear bar to jurisdiction of the High Court its powers under Article**

226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. In circumstances like the present one bar of Article 329 (b) will not come into play when case falls under Articles 191 and 193 and whole of the election process is over. Consider the case where the person elected is not a citizen of India. Would the Court allow a foreign citizen to sit and vote in the Legislative Assembly and not exercise jurisdiction under Article 226 of the Constitution?

(28) We are, therefore, of the view that the High Court rightly exercised its jurisdiction in entertaining the writ petition under Article 226 of the Constitution and declared that the appellant was not entitled to sit in Tamil Nadu Legislative Assembly with consequent restraint order on him from functioning as a member of the Legislative Assembly. The net effect is that the appellant ceases to be a member of the Tamil Nadu Legislative Assembly. Period of the Legislative Assembly is long since over. Otherwise we would have directed respondent no. 2, who is Secretary to Tamil Nadu Legislative Assembly, to intimate to Election Commission that Lalgudi Assembly Constituency seat has fallen vacant and for the Election Commission to take necessary steps to hold fresh election from that Assembly Constituency. Normally in a case like the Election Commission should invariably be made a party."

The ratio as could be culled out from the judgment in **K.Venkatachalam (3 Supra)** is that Article 226 of the Constitution is couched in widest possible term and the bar contained in Article 329 (b) cannot be invoked for refusing to entertain petition filed for ouster of a person from a public office.

Since Article 243ZG (b) of the Constitution, which was reproduced hereinabove, is *ipsissima verba* with Article 329 (b) to the entertaining of challenge to the election, we hold that the bar contained therein is not attracted with a petition filed questioning the eligibility of a person to hold a public post or office, which he occupies by virtue of the election held in accordance with the relevant statutes.

We shall now examine whether the appellant's election is in violation of any of the statutory or constitutional provisions, rendering him ineligible to hold a public office.

Part XVI of the Constitution of India, evidently in recognition of the economic and social backwardness of the Scheduled Castes, Scheduled Tribes and other weaker classes made special provisions in respect of these classes. They include reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People (Article 330), reservation of seats in the Legislative Assemblies of the States (Article 332) and claims of Scheduled Castes and Scheduled Tribes to services and posts (Article 335). Under Article 338, National Commission for Scheduled Castes and Scheduled Tribes is envisaged and the Commission's duty is *inter alia* to participate and advise the State on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any State. Article 341 (1) of the Constitution *inter alia* empowers the President of India, after consultation with the Governor of the State concerned to specify by public notification the castes, races or tribes or parts of or groups within castes, races or tribes, which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes in relation to that State.

In **Punit Rai vs Dinesh Chaudhary**[11], the Supreme Court

held that the object of Clause (1) of Article 341 is to provide preferential right by way of protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. It was also held that it is in furtherance of this object that the President has been authorized to limit the notification to parts or groups within the castes. The President of India in exercise of his power conferred on him under Article 341 (1) of the Constitution notified the Constitution (Scheduled Castes) Order, 1950. It is not in dispute that Mala Community in Andhra Pradesh is included in the Schedule and, therefore, it is a Scheduled Caste, whereas a person, who was born in Mala Community, but converted into Christianity, is not shown as falling under Scheduled Caste category.

In pursuit of this constitutional goal of amelioration of the Scheduled Castes and Scheduled Tribes and as a part of process of their empowerment, the States and Union have been making legislations providing for reservations in their favour in matters of public employment, admission into educational institutions and elective offices. The 1965 Act is one such piece of Legislation, which *inter alia* provides for reservation to the members belonging to Scheduled Caste. Section 23 (1) (c) of the 1965 Act reads as follows:

> "**23. Election of Chairperson:-** (1) (a) ……
>
> (b) ……
>
> (c) Out of the total number of offices of chairperson in the State, the Government shall, subject to such rules as may be prescribed, by notification reserve –
>
> (i) such number of offices to the Scheduled Castes and Scheduled Tribes as may be determined subject to the condition that the number of offices so reserved shall bear, as nearly as may be, the same proportion to the total number of offices to be filled in the State as the population of the Scheduled Castes or Scheduled Tribes, as the case may be, in the Municipalities of the State

bears to the total population in the Municipalities of the State and such offices may be allotted their rotation to different Municipalities in the State."

In exercise of the power vested in it under the 1965 Act, the Government of Andhra Pradesh framed Rules called Andhra Pradesh Municipalities (Reservation of Offices of Chairpersons in Municipal Councils and Nagar Panchayats) Rules, 1995.

Under Rule 7, the offices of Chairperson reserved for Scheduled Tribes, Scheduled Castes and Backward Classes and Women shall be allotted by rotation to different Municipal Councils in the State. A similar reservation is provided for Wards in the Municipal Councils in respect of the Scheduled Castes and other categories by the State Government.

The aforementioned provisions clearly indicate that reservations for the elective offices in the Municipalities in the State of Andhra Pradesh are made as a part of constitutional scheme and with the avowed object of betterment of this class of persons. There can, therefore, be no doubt that if a person who does not belong to the Scheduled Caste category for which the elective office is reserved masquerades as a person belonging to the said category and gets elected to the reserved office, such an act not only constitutes violation of the statutory provisions under the 1965 Act, but also a fraud on the Constitution. The petition filed for issue of a writ of Quo Warranto against such person squarely falls within the category of cases enumerated by the Supreme Court in **Venkatachalam (3 supra)** and the Constitutional bar envisaged either under Art. 329 (b) or Art. 243ZG (b) is not attracted to these cases.

What remains to be considered is whether the issue relating to the social status of the appellant falls in the realm of a disputed

question of fact, which this Court exercising jurisdiction under Article 226 of the Constitution of India would not ordinarily venture to adjudicate.

In paragraph 10 of the affidavit filed in support of the writ petition, it was averred that on enquiries, the members of the 1st respondent association and other respondents (respondent Nos.2 to 10) came to know that the appellant belongs to Backward Class - 'C' category because he is a Mala converted into Christianity, that for the past two generations, his family was professing Christianity, that on the said basis he obtained employment in the then Andhra Pradesh State Electricity Board (presently Southern Power Distribution Company of A.P. Ltd.) and continued in service till retirement on 30.6.2003.

In paragraph 11 of the affidavit, it was further averred that respondent Nos.1 to 10 gathered the appellant's service particulars and documents namely, Xerox copy of the service roll of the appellant and the seniority list of Assistant Linemen of Tenali Division of Southern Power Distribution Company of Andhra Pradesh Limited, that these documents clearly disclose that respondent No.9 is a Mala converted into Christianity and that he belongs to Backward Class (category – C). In paragraph 12, it was averred that the enquiries of respondent Nos.1 to 10 reveal that in August, 2005, the appellant obtained a caste certificate from Mandal Revenue Officer, Bapatla by representing that he belongs to Mala community, which is a caste specified in the Constitution (Scheduled Castes) Order, 1950.

In the counter-affidavit filed by the appellant, the allegations made by respondent Nos.1 to 10 were denied. As regards his appointment in the service of the Andhra Pradesh State Electricity Board and the entries contained in the Service Rolls, the appellant made an interesting averment, which is extracted below:

> "The averments in para 10 that the petitioners gathered service particulars and documents, namely; (1) Xerox copies of service roll of me and (2) seniority list of Assistant Linemen of Tenali Division of Southern Power Distribution Company of Andhra Pradesh Limited that these documents clearly disclose that I am a Mala converted to Christianity and belongs to Backward Class ('C' category) are not correct."

From the above-reproduced averments in the counter-affidavit, it is clear that what the appellant denied was the writ petitioners gathering service particulars and documents and the claim that those documents disclose that the appellant belongs to Backward Class ('C' category). However, there is no denial of either the existence of the service roll and the seniority list pertaining to the appellant or the authenticity of the two documents produced by the writ petitioners.

In paragraph 7 of his affidavit, the appellant asserted that he was born at Peda Vadlapudi Village of Mangalagiri Mandal, Guntur District in the family of Caste Mala belonging to Hindu religion; that his father is Sangeetha Rao; that the family of his parents and their ancestors are Hindu Malas and that he never followed Christian faith and was never baptized for conversion to Christianity. The appellant also referred to two caste certificates, one issued by Mandal Revenue Officer, Bapatla in August, 2005 and the other issued by Mandal Revenue Officer, Mangalagiri in the year 2004 showing that the appellant belongs to Hindu Mala category. In paragraph 9, the appellant stated that the writ petitioners on their own showing failed to get document No.24 (Ex.P24, service roll of the appellant) and that it is not known to the appellant as to how they filed the said document. In the writ appeal, the appellant filed WAMP.No.86 of 2007 for grant of leave to raise additional grounds in the form of paragraph Nos.4(1) to 4(16) of

which paragraphs 4(5) and 4 (6) are as under:

> "4(5) The learned Single Judge ought to have noticed that the Xerox copies filed by the petitioner, which are stated to be 'Service Book' or the 'Seniority List', cannot be made basis for adjudication about the caste of the writ appellant. In this regard, the learned Single Judge ought to have noticed that such Xerox copies are inadmissible in evidence and the petitioner had not established the legal custody of these copies with them and source from where they obtained copies of these documents.
>
> 4(6) The learned Single Judge erred materially in observing that "in respect of these documents, namely, the alleged service records or the seniority list there cannot be serious disputes is not correct". The writ appellant disputed those documents."

In view of the specific grounds raised about the inadmissibility of the Xerox copies of the service roll and seniority list and the submissions made by the learned counsel for the appellant doubting the genuineness of the service record, portions of which are extracted in the order of the learned Single Judge, we passed order dated 18.1.2007 and directed the Managing Director, Southern Power Distribution Company of Andhra Pradesh Limited to forward the entire original service record of the appellant to this Court in a sealed cover. Accordingly, the original service record of the appellant was sent by Superintendent Engineer, Operation Circle, Andhra Pradesh Southern Power Distribution Company Limited, Guntur, along with his covering letter No.SE/O/GNT/Adm./C3/D.No.141/07, dated 27.01.2007 in a sealed cover. The sealed cover was opened in the Court in the presence of the counsel for the parties on 09.02.2007 and after perusing the service roll, the same was shown to the counsel for the

appellant and respondent Nos.1 to 10. We also directed the Court Officer to supply Xerox copies of the relevant pages of the service roll containing two volumes (volume Nos.1 and 2) to the learned counsel for the parties. Thereafter, the writ appeal was heard on 13.04.2007 and 17.04.2007 and judgment reserved.

A perusal of the original service record shows that Ex.P.24, Xerox copy of the service roll, filed by respondent Nos.1 to 10 along with writ petition is a true extract of the appellant's service roll. The first page of the service roll contains several columns pertaining to the name, father's name, race, residence, date of birth etc., of the appellant. These columns were filled up on 27.04.1974 by the Assistant Engineer. The appellant signed that page against the column "Signature of the individual". The service roll clearly indicates that against column 'Race' the words "Indian, Christian, Mala" are written.

After supplying all Xerox copies of the relevant extracts of the Service Register, the appellant has not filed any affidavit either to controvert the correctness of the entries contained therein or to explain the circumstances under which those entries were made. It is, thus, evident that the appellant never seriously disputed the entry made in his service roll, though an attempt in that regard was made at the time of hearing the writ appeal, which resulted in summoning of the original record. The entries of the service roll prove the contention of respondent Nos.1 to 10 (writ petitioners) that the appellant entered the service of Andhra Pradesh State Electricity Board on the basis of his claim that he belongs to Christian Mala, which admittedly falls in the category of BC-C and not Scheduled caste. Ex.P.25, the seniority list of Assistant Linemen, the authenticity of which has not been questioned, shows that in Column 3, which pertains to the caste, the

appellant (at Serial No.9 of the seniority list) is shown as B.C.-C.

We may now advert to the two caste certificates produced by the appellant along with his counter-affidavit. One of these certificates is shown to have been issued by Mandal Revenue Officer, Mangalagiri on 23.7.2004. The other certificate dated 17.8.2005 is also shown to have been issued by Mandal Revenue Officer without specification of the Mandal. A perusal of the second certificate shows that there is no office seal on it and the name of the mandal is not shown below the typed words "Mandal Revenue Officer". That apart, we are of the considered view that the two certificates produced by the appellant do not represent his correct social status and there is no reason to discard the specific entries made in the service roll and the seniority list, which was prepared as late as on 31.3.2004. The appellant's failure to offer any explanation regarding the entries in the service rolls clinchingly establish that the appellant was all through treated as a person belonging to BC-C category and not as a person belonging to Scheduled Caste category. In view of the undisputed documentary evidence, we are not prepared to accept the contention of the appellant that his social status falls within the realm of a disputed question of fact. We are also satisfied that there is no necessity of relegating the parties to the procedure, which is ordinarily followed under the provisions of the 1993 Act to determine the genuineness or otherwise of the two caste certificates obtained by the appellant.

Learned counsel for the appellant strongly relied upon two Division Bench judgments of this Court in **K. Vishnuvardhan Reddy (1 supra)** and **Sadhanapalli Bheemaraju (2 supra)** in support of his contention that the social status of an elected candidate cannot be gone into in a writ petition. In **K.Vishnuvardhan Reddy (1 supra)**, some of the contestants in the general election pertaining to 185-

Nandikotkur Assembly Constituency as independent candidates filed a writ petition seeking writ of Mandamus to the official respondents therein to permit their agents in the counting hall at the time of counting of votes on 06.10.1999. In order to meet the challenge posed by the respondents to the maintainability of the writ petition, the counsel for the writ petitioners relied on the judgment of the Supreme Court in **K. Venkatachalam (3 supra)**. In that context, the Division Bench observed as under:

> "The observations made by the Supreme Court are applicable in the facts and circumstances of that case wherein a person who was not qualified to sit in the Assembly was debarred from sitting in the Assembly in exercise of the power under Article 226. There is no provision in the Representation of the People Act for issuance of any direction or relief debarring an unqualified person from sitting in the Assembly and that therefore the power under Article 226 was invoked. The case on hand is entirely different in nature. The power under Article 226 cannot be exercised for all apprehensions – factual, imaginary or even in matters where there is infraction of any rule or legality which does not result in injustice much less substantial injustice which is the fundamental principle on which the power under Article 226 has been conferred on the High Courts. It is well established principle that power under Article 226 cannot be exercised to set right all the illegalities and substitute for all remedies unless it is shown that substantial injustice has been caused to the person. **The Courts cannot take over the administrative functioning from the Election Authorities or the Returning Officer who are the constitutional authorities as well as the statutory authorities vested with the power in matters of election ……**"

In **Sadhanapalli Bheemaraju (2 supra)**, a person claiming the

social status of a Scheduled Tribe got elected to the Legislative Assembly from Yellavaram Assembly segment and a voter filed the writ petition for a writ of Mandamus to declare that the elected person is not qualified to sit as a member of the Legislative Assembly as he does not belong to the Scheduled Tribe category. The elected candidate (the 6th respondent in the said writ petition) contended that his mother was admittedly a Scheduled Tribe woman and that he was recognized as a Scheduled Tribe person by the Scheduled Tribe Community. He also contended that after a thorough enquiry by the authorities, he was given a Scheduled Tribe Community certificate. In the light of the said factual matrix of the case, the Division Bench in paragraph 15 held as under:

> "In view of the rival contentions, the contentious issue in this case mainly depends upon the evidence as to whether the sixth respondent has been recognized by Valmiki Tribe people as belonging to the said Tribe having accepted the marriage between a woman belonging to the Tribe with another spouse belonging to Scheduled Caste and that the person claiming to be a member belonging to Scheduled Tribe has been following the basic traits and tenets of that community which requires the appreciation of both roal and documentary evidence to be adduced. It is a pure question of fact and in the absence of evidence adduced on either side cannot be effectively adjudicated as held by the Apex Court in Punit Rai's case (referred to 2 supra). Such an exercise cannot be undertaken in this writ petition. In our view, it can validly be done only in a properly constituted election petition where both parties will have an opportunity to adduce evidence in support of their respective claims. Therefore, it is not safe nay hazardous to decide the case of sixth respondent placing reliance upon Ex.A1 – Xerox copy of the judgment in E.P.No.12 of 1985 alone."

After considering the relevant case law on the issue, the Division Bench held as under:

> "Thus from the conspectus of the judgments of the Apex Court referred to supra, it is obvious that if the process of election by omissions and commissions of the parties is prevented and not promoted in order to facilitate its flow, Article 226 of the Constitution of India can be invoked, inasmuch as such erroneous actions or omissions or errors should have the effect of interference with free flow of the scheduled election, which is the paramount consideration. If by such erroneous orders, the conduct of the election is not hindered, then the Courts under Article 226 of the Constitution of India should not interfere with the orders of the Returning Officers, remedy for which lies in an election petition only. Likewise, if it is a clear case of playing fraud on the Constitution the jurisdiction of the High Court can be invoked. Thus, the jurisdiction under Article 226 of the Constitution of India has been carved out in respect of specified areas which cannot be illustrated in exhaustive manner but which have the effect of interfering with free flow of the scheduled election or hindering the progress of the election."

In our opinion, neither of the two judgments can be relied for upsetting the well-reasoned order passed by the learned Single Judge. A careful reading of the second judgment shows that the Court declined relief by observing that the question of the 6th respondent's social status was required to be adjudicated only in a properly constituted election petition after considering the evidence to be adduced by both the parties in support of their respective claims. Indeed, the Division Bench while holding so, on the basis of the decided case law, held that if it is a clear case of playing fraud on the Constitution, the jurisdiction of the High Court can be invoked.

From the detailed discussion made hereinabove, it is proved

beyond an iota of doubt that the appellant, who belongs to BC-C category, played fraud by making a false claim that he belongs to Scheduled Caste, contested and got elected as a Councilor from Ward No.8 and Chairman of the Municipal Council, which were reserved for Scheduled Caste category. Where a person is proved to have played fraud on the Constitution, neither the bar under Section 243ZG (b) applies nor the question of driving the writ petitioners to invoke the alternative remedy of filing an election petition arises.

In the result, the writ appeal fails and is accordingly dismissed.

The Registry is directed to return the service register of the appellant to the Superintendent Engineer, Operation Circle, APSPDCL, Guntur under acknowledgement.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: -07-2007.

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[1] 1999 (6) ALT 217 (DB)

[2] 2005 (3) ALT 578 (DB)

[3] AIR 1999 SC 1723

[4] AIR 1965 SC 491

[5] AIR 1952 SC 64

[6] AIR 1954 SC 520

[7] AIR 1965 SC 1892

[8] AIR 1978 SC 851

[9] AIR 1985 SC 1746

[10] AIR 1988 SC 61

[11] (2003) 8 SCC 204